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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,831	09/12/2003	Wade Littleton	21694.00	1531

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LITMAN LAW OFFICES, LTD
PO BOX 15035
CRYSTAL CITY STATION
ARLINGTON, VA 22215

EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/666,831

Applicant(s)

LITTLETON ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/19/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-11 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1, 3 and 5-10 and 12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre ('510).

With respect to **Claim 1**: McIntyre teaches a pouch comprising a top layer of porous material 1 and a bottom layer of porous material 1', said layers 1 and 1' being joined together by sealed edges extending around the outer perimeters of said top and bottom layers of porous material. The top and bottom layers of porous material with their sealed edges form a cavity therebetween. A powder is contained within said cavity, and said powder is kept between the top and bottom layers by said sealed edges, and is capable of being dispersed in a non-hazardous amount through the top and bottom layers during the production of said pouch, and thus also during use. The limitation pertaining to placement of said pouch in a male user's groin area is considered intended use language that is being considered but not given patentable weight.

McIntyre teaches a non-woven web and thus does not teach that layers 1, 1' are comprised of a woven fabric. However, since the layers are porous, and woven fabrics are

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porous by virtue of the nature of a woven article due to the process of weaving, it would be obvious to one of ordinary skill in the art to replace the thin tissue or other non-woven web taught by McIntyre with a woven (and necessarily porous) fabric that is also fully capable of dispersing a powder such as that claimed and the powder of McIntyre with a reasonable expectation of success.

With respect to **Claims 6-8**: McIntyre teaches that the powder is a superabsorbent and therefore is a moisture-absorbing powder, and further, the powder is capable of reducing chafing and controlling odor, as chafing and odor are caused primarily by excess moisture trapped against the skin of a user.

With respect to **Claim 9**: Chafe-reducing is defined as reducing irritation to the skin caused by friction and medicated is defined as containing something that serves as a remedy or is corrective, therefore, the powder contained in the pouch taught by McIntyre is sufficient for preventing irritation or scratching of the skin, and is thus considered herein to be medicated.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre ('510).

With respect to **Claim 5**: McIntyre teaches a woven cotton porous material, and therefore does not explicitly teach gauze. McIntyre teaches that the material is tissue, however gauze is also

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comprised of woven cotton material, therefore it would be obvious to one of ordinary skill in the art to substitute gauze for tissue as the porous material taught by McIntyre with a reasonable expectation of success.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre ('510) in view of Raducu ('010).

With respect to **Claim 3**: McIntyre does not teach linen as the material for layers 1, 1'. Raducu teaches a granulated mixture (i.e. of oats) packed in small linen bags or pouches used for body care, as stated in the abstract of the published document. It would have been obvious to one skilled in the art to provide McIntyre's pouch with a linen material, as taught by Raducu to provide a porous and soft but effective topical solution (i.e. powder) delivery applicator.

Claims 10 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre ('510) in view of Moretz et al ('467).

With respect to **claim 10**: Please see the rejection of claim 1 in addition to the following:

McIntyre does not teach a pair of male underwear having a fly pocket area. Moretz teaches a male support undergarment having a moisture-management pouch located in the fly area.

Moretz teaches that this moisture control prevents accumulation of moisture to prevent chafing, and prevents odor, therefore it would be obvious to one of ordinary skill in the art to combine the pouch taught by McIntyre with the undergarment taught by Moretz with a reasonable expectation of success to prevent moisture-related irritation or discomfort and odor.

With respect to **Claim 13**: McIntyre teaches a woven cotton porous material, and therefore does not explicitly teach gauze. McIntyre teaches that the porous material is tissue, however gauze is also comprised of woven cotton material, therefore it would be obvious to one of ordinary skill in the art to substitute gauze for tissue as the porous material taught by McIntyre with a reasonable expectation of success.

With respect to **Claims 14-16**: McIntyre teaches that the powder is a superabsorbent and therefore is a moisture-absorbing powder, and further, the powder is capable of reducing chafing and controlling odor, as chafing and odor are caused primarily by excess moisture trapped against the skin of a user.

With respect to **Claim 17**: Chafe-reducing is defined by Merriam-Webster (definition of chafe or chafing) as reducing irritation to the skin caused by friction and medicated is defined by Merriam-Webster as containing something that serves as a remedy or is corrective, therefore, the powder contained in the pouch taught by McIntyre is sufficient for preventing irritation or scratching of the skin, and is thus considered herein to be medicated.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre ('510) in view of Moretz et al ('467) as applied to claims 10 and 12-17 above, and further in view of Raducu ('010).

With respect to **Claim 11**: Please see the rejection of claim 1 in addition to the following: McIntyre teaches a woven (claim 12) cotton porous material. Neither McIntyre nor Moretz

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teaches a porous material comprised of linen. Raducu teaches a granulated mixture (i.e. of oats) packed in small linen bags or pouches used for body care, as stated in the abstract of the published document. It would have been obvious to one skilled in the art to provide the pouch taught by McIntyre with a linen material, as taught by Raducu to provide a porous and soft but effective topical solution (i.e. powder) delivery applicator.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
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January 3, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

